



FEDERAL ACQUISITION CIRCULAR

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Number 90-14

Federal Acquisition Circular (FAC) 90-14 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-14 is effective *October 23, 1992*.

FAC 90-14 LIST of SUBJECTS

<u>Title</u>	<u>Page</u>
Additions to the List of Designated Countries	1

FAC 90-14 SUMMARY of ITEMS

Federal Acquisition Circular (FAC) 90-14 amends the Federal Acquisition Regulation (FAR) as specified below:

Additions to the List of Designated Countries (FAR Case 92-621)

The definition in FAR 25.401(a) of "designated country", which includes the list of countries or instrumentalities designated under the Trade Agreements Act, is being amended to include Greece, Liechtenstein, and Spain.

Replacement pages: 25-7, and 25-8

FILING INSTRUCTIONS

Remove Pages

25-7 and 25-8

Replacement Pages

25-7 and 25-8

(1) The availability of excess or near-excess foreign currency;

(2) The feasibility of using that currency in payment of the contract;

(3) The price differential, if any, that will be considered acceptable; and

(4) Procedures for obtaining excess or near-excess foreign currency requirements.

(d) When use of excess or near-excess foreign currency is determined feasible, the contracting officer shall, in the solicitation—

(1) Require that offers be stated in U.S. dollars;

(2) Request that offers also be stated, in whole or in part, in excess or near-excess foreign currency; and

(3) Reserve the right to make the award to the responsive offeror (i) that is willing to accept payment, in whole or in part, in excess or near-excess foreign currency, and (ii) whose offer is most advantageous to the Government, even though the total price may be higher than offers in U.S. dollars.

25.305 Solicitation provision and contract clause.

(a) *Solicitation provision.* The contracting officer shall insert the provision at 52.225-6, Balance of Payments Program Certificate, in solicitations for supplies or services for use outside the United States, unless one or more of the exceptions in 25.302(b) applies or the acquisition is made under the Trade Agreements Act of 1979 (see Subpart 25.4).

(b) *Oral quotations.* When quotations are obtained orally, vendors shall be informed that only domestic end products or services will be acceptable, except for those items that have been excepted or when the price for the foreign end products or services meets the evaluation criteria in 25.303(b).

(c) *Contract clause.* The contracting officer shall insert the clause at 52.225-7, Balance of Payments Program, in solicitations and contracts for acquiring supplies or services for use outside the United States, unless one or more of the exceptions in 25.302(b) applies or the acquisition is made under the Trade Agreements Act of 1979 (see Subpart 25.4).

SUBPART 25.4—PURCHASES UNDER THE TRADE AGREEMENTS ACT OF 1979

25.400 Scope of subpart.

This subpart provides additional policies and procedures peculiar to acquisitions subject to the Agreement on Government Procurement and the Trade Agreements Act of 1979 (19 U.S.C. 2501-2582) including (a) acquisitions from countries designated under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, et seq.); (b) acquisitions involving offers of Israeli end products under the U.S.-Israel Free Trade Area Agreement, as approved by Congress in the United States-Israel Free Trade Area Implementation Act of 1985 (19 U.S.C. 2112 note); and (c) acquisitions involving offers of Canadian end products under the United States-Canada Free-Trade Agreement, as

approved by Congress in the United States-Canada Free-Trade Agreement Implementation Act of 1988 (19 U.S.C. 2112 note).

25.401 Definitions.

“Canadian end product,” as used in this subpart, means (a) an unmanufactured end product mined or produced in the territory of Canada or other territories to which the customs laws of Canada apply; or (b) an end product manufactured in the territory of Canada or other territories to which the customs laws of Canada apply, if the cost of the components mined, produced or manufactured either in the territory of Canada, or other territories to which the customs laws of Canada apply, or in the United States, exceeds 50 percent of the cost of all the components.

“Caribbean Basin country,” as used in this subpart, means a country designated by the President as a beneficiary under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, et seq.) and listed below:

Antigua and Barbuda
Aruba
Bahamas
Barbados
Belize
British Virgin Islands
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Guyana
Honduras
Jamaica
Montserrat
Netherlands Antilles
St. Christopher-Nevis
St. Lucia
St. Vincent and the Grenadines
Tobago
Trinidad

“Caribbean Basin country end product,” as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of the Caribbean Basin country, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term *includes* services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such. The term *excludes* products that are excluded from duty free treatment for Caribbean countries under 19 U.S.C. 2703(b), which presently are—

(1) Textiles and apparel articles that are subject to textile agreements;

(2) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under Title V of the Trade Act of 1974;

(3) Tuna, prepared or preserved in any manner in air-tight containers;

(4) Petroleum, or any product derived from petroleum; and

(5) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Tariff Schedule of the United States (TSUS) column 2 rates of duty apply.

"Designated country," as used in this subpart, means a country or instrumentality designated under the Trade Agreements Act of 1979 and listed below:

Austria	Italy
Bangladesh	Japan
Belgium	Lesotho
Benin	Liechtenstein
Bhutan	Luxembourg
Botswana	Malawi
Burundi	Maldives
Canada	Mali
Cape Verde	Nepal
Central African Republic	Netherlands
Chad	Niger
Comoros	Norway
Denmark	Rwanda
Federal Republic of Germany	Singapore
Finland	Somalia
France	Spain
Gambia	Sudan
Greece	Sweden
Guinea	Switzerland
Haiti	Tanzania U.R
Hong Kong	Uganda
Ireland	United Kingdom
Israel	Upper Volta
	Western Samoa
	Yemen

"Designated country end product," as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of the designated country, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was

so transformed. The term includes services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

"Eligible product," as used in this subpart, means a designated country end product or a Caribbean Basin country end product.

25.402 Policy

(a)(1) Executive Order 12260 requires the U.S. Trade Representative to set the dollar threshold for application of the Trade Agreements Act. The threshold will be published in the *Federal Register* and will be distributed through agency procedures on an expedited basis. When the value of the proposed acquisition of an eligible product is estimated to be at or over the dollar threshold, agencies shall evaluate offers for an eligible product without regard to the restrictions of the Buy American Act (see Subpart 25.1) or the Balance of Payments Program (see Subpart 25.3). When the value of the proposed acquisition is estimated to be below the Trade Agreements Act threshold, the restrictions of the Buy American Act or the Balance of Payments Program shall be applied to foreign offers, except as noted in subparagraphs (a)(2) and (a)(3) of this section (see 25.105).

(2) As required by Article 15 of the U.S.-Israel Free Trade Area Agreement, agencies other than the Department of Defense shall evaluate offers of Israeli end products at or above \$50,000 in amount without regard to the restrictions of the Buy American Act (see Subpart 25.1) or the Balance of Payments Program (see Subpart 25.3).

(3) As required by Section 306 of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (19 U.S.C. 2112 note), agencies shall evaluate offers of Canadian end products above \$25,000 without regard to the restrictions of the Buy American Act (see Subpart 25.1) or the Balance of Payments Program (see Subpart 25.3).

(4) To determine whether the Trade Agreements Act applies to the acquisition of products by lease, rental, or lease-purchase contract (including lease-to-ownership, or lease-with-option-to purchase), the contracting officer shall calculate the estimated acquisition value as follows:

(i) If a fixed-term contract of 12 months or less is contemplated, use the total estimated value of this acquisition.

(ii) If a fixed-term contract of more than 12 months is contemplated, use the total estimated value of the acquisition plus the estimated residual value of the leased equipment at the conclusion of the contemplated term of the contract.

(iii) If an indefinite-term contract is con-